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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/048,238	06/17/2002	Philip Kenneth Freakley	MCNT 203	2697
7590 03/16/2004				
Fulbright & Jaworski 666 Fifth Avenue New York, NY 10103			EXAMINER COOLEY, CHARLES E	
			ART UNIT 1723	PAPER NUMBER
DATE MAILED: 03/16/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/048,238	Applicant(s) FREAKLEY ET AL.	
	Examiner Charles E. Cooley	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01232002</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All of the CERTIFIED copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

### ***Information Disclosure Statement***

2. Note the attached PTO-1449 form submitted with the Information Disclosure Statement filed 23 JAN 2002.

### ***Drawings***

3. The drawings are objected to because of the following informalities:
  - a. the drawings contain improper sectional views. The plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line. The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and should have arrows to indicate the direction of sight (37 CFR 1.84(h)(3)). Correction is required.

For example, Figure 3b should be a sectional view taken along line 3b-3b in Figure 3a (not sectional line A-A). All sectional views should be corrected in accordance with 37 CFR 1.84(h)(3).

Applicant should also ensure a proper one-to-one correspondence between the specification and drawings in accordance with MPEP 608.01(g) and 37 CFR 1.84(f).

The brief description of the drawings and the descriptive portion of the specification require revision in accordance with the above drawing objections.

Correction is required.

4. Drawing Corrections: 37 CFR 1.121 (d) requires that any drawing changes be submitted in compliance with 37 CFR 1.84 on replacement sheets as an attachment to an amendment document. An accompanying detailed explanation of all of the changes should be provided on a separate sheet in the drawing amendments or remarks section of the amendment document. A marked-up copy of one or more of the figures being amended, with annotations, may also be included to provide further explanation of the changes made. The marked-up version must be labeled as "Annotated marked-up Drawings." Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per Sec. 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in

the next Office action. No further drawing submission of the amended drawing figure(s) by applicant would be required, unless applicant is so notified.

### ***Specification***

5. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

6. The disclosure is objected to because of the following informalities:

- a. Terms such as "centre" throughout the specification should be revised to reflect customary U.S. spelling.
- b. The descriptions of the Figures on page 6 do not correspond with the Figure legends on the drawing sheets.
- c. The specification should have the following headings inserted therein at the appropriate locations in accordance with 37 CFR 1.77:

### **Arrangement of the Specification**

The following order or arrangement is preferred in framing the specification and, except for the title of the invention, each of the lettered items should be preceded by the headings indicated below.

- (a) Title of the Invention.
- (b) Cross-References to Related Applications (if any).
- (c) Statement as to rights to inventions made under Federally-sponsored research and development (if any).
- (d) Background of the invention.
  - 1. Field of the Invention.
  - 2. Description of the Related Art including information disclosed under 37 C.F.R. §§ 1.97-1.99.
- (e) Summary of the Invention.
- (f) Brief Description of the Drawing.
- (g) Description of the Preferred Embodiment(s).

- (h) Claim(s).
- (l) Abstract of the Disclosure.

Appropriate correction is required.

7. The Abstract of the Disclosure is objected to because:
- a. the abstract is not on a single sheet without other extraneous matter.
- Correction is required. See MPEP § 608.01(b).

8. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (MPEP 606.01).

***Claim Rejections - 35 U.S.C. § 112, first paragraph***

9. The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention and failing to adequately teach how to make and/or use the invention, i.e., failing to provide an enabling disclosure.

The specification is deemed inadequate in describing the invention because it is not known what constitutes "exponential mixing" within the context of the disclosed invention. Clarification is required. The detailed description section of the specification lacks a description of the subject matter shown in Figures 2A, 2B, and 2C.

10. Claims 1-14 are thereby rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

***Claim Rejections - 35 U.S.C. § 112, second paragraph***

11. Claims 6-8 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6: the term "exponential mixing" is not adequately described by the specification and is therefore a vague and indefinite term in claim 6.

Claim 7 contradicts that which is disclosed by page 4, last paragraph.

Each pending claim should be thoroughly reviewed such that these and any other informalities are corrected so the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-5 and 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 2556982.

FR 2556982 discloses in Figures 10-12 an apparatus having multiple levels of vertically arranged mixing compartments having opened bottom portions with the compartments 10 of one level being rotationally displaceable relative the compartments 29 of an adjacent level; the compartments being angularly spaced and disposed outwardly from a common origin (Fig. 11); the centers of each compartment being equiangularly spaced from the center of an adjacent compartment (Fig. 11); every other level of compartments being moveable via drive means 11, 12 and the other levels of compartments being fixed to housing 3; the apparatus including the recited number of compartments (Fig. 12).

14. Claims 1-5 and 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Myers (US 2,734,728).

Myers discloses in Figures 1-5 an apparatus having multiple levels of vertically arranged mixing compartments having opened bottom portions with the compartments 41 of one level being rotationally displaceable relative the compartments 40 of an adjacent level; the compartments being angularly spaced and disposed outwardly from a common origin (Figs. 2-3); the centers of each compartment being equiangularly spaced from the center of an adjacent compartment (Figs. 2-3); every other level 33 of compartments being moveable via drive means 15 and the other levels 31 of



compartments being fixed to housing 10; the apparatus including the recited number of compartments (Figs. 2-3).

\* \* \*

15. While the examiner might speculate as to what is meant by the language of claims 6-8, the uncertainty provides the examiner with no proper basis for making the comparison between that which is claimed and the prior art (MPEP 2173.06). Rejections under 35 U.S.C. 103 should not be based upon "considerable speculation as to the meaning of terms employed and assumptions as to the scope of the claims." *In re Steele*, 305 F.2d 859, 134 USPQ 292 (CCPA 1962). When no reasonably definite meaning can be ascribed to certain terms in a claim, the subject matter does not become obvious, but rather the claim becomes indefinite. *In re Wilson*, 424 F.2d 1382, 165 USPQ 494 (CCPA 1970). As it has been held that it is improper to rely on what are at best speculative assumptions as to the meaning of a claim and then base a rejection under 35 U.S.C. 103 thereon, no such rejections have been made concerning claims 6-8. *Ex parte Brummer*, 12 USPQ2d 1654. However, the lack of such rejections should not be construed as meaning that the claims as presently drawn would be patentable if corrected. Any response should carefully consider the prior art of record in accordance with 37 CFR 1.111.

### **Conclusion**

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited prior art shows devices having multiple levels of mixing

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compartments having opened bottom portions with the compartments of one level being rotationally displaceable relative the compartments of an adjacent level.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles E. Cooley  
Primary Examiner  
Art Unit 1723

3 March 2004